



Senate

General Assembly

File No. 275

February Session, 2018

Substitute Senate Bill No. 279

Senate, April 5, 2018

The Committee on Public Safety and Security reported through SEN. LARSON of the 3rd Dist. and SEN. GUGLIELMO of the 35th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT EXEMPTING THE DATE OF BIRTH OF A POLICE OFFICER
AND AN EMPLOYEE OF THE DEPARTMENT OF CORRECTION FROM
DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective October 1, 2018*) (a) No public agency may
2 disclose, under the Freedom of Information Act, from its personnel,
3 medical or similar files, the date of birth of any of the following
4 persons employed by such public agency: (1) A sworn member of a
5 municipal police department, (2) a sworn member of the Division of
6 State Police within the Department of Emergency Services and Public
7 Protection, (3) a sworn law enforcement officer within the Department
8 of Energy and Environmental Protection, or (4) an employee of the
9 Department of Correction.
- 10 (b) (1) Except as provided in subsections (a) and (c) of this section,
11 no public agency may disclose the date of birth of any person
12 described in subsection (a) of this section from any record described in

13 subdivision (2) of this subsection that is requested in accordance with
14 the provisions of said subdivision, regardless of whether such person
15 is an employee of the public agency, provided such person has
16 submitted a written request for the nondisclosure of the person's date
17 of birth to the public agency.

18 (2) Any public agency that receives a request for a record subject to
19 disclosure under the Freedom of Information Act, where such request:
20 (A) Specifically names a person who has requested that his or her date
21 of birth be kept confidential under subdivision (1) of this subsection,
22 shall make a copy of the record requested to be disclosed and shall
23 redact the copy to remove such person's date of birth prior to
24 disclosing such record, (B) is for an existing list that is derived from a
25 readily accessible electronic database, shall make a reasonable effort to
26 redact the date of birth of any person who has requested that his or her
27 date of birth be kept confidential under subdivision (1) of this
28 subsection prior to the release of such list, or (C) is for any list that the
29 public agency voluntarily creates in response to a request for
30 disclosure, shall make a reasonable effort to redact the date of birth of
31 any person who has requested that his or her date of birth be kept
32 confidential under subdivision (1) of this subsection prior to the
33 release of such list.

34 (3) Except as provided in subsection (a) of this section, a public
35 agency may disclose the date of birth of any person listed in subsection
36 (a) of this section from any record that is not subject to subparagraph
37 (A), (B) or (C) of subdivision (2) of this subsection.

38 (c) The provisions of this section shall not apply to Department of
39 Motor Vehicles records described in section 14-10 of the general
40 statutes and shall not be construed to prohibit the disclosure without
41 redaction of any lists prepared under title 9 of the general statutes.

42 (d) No public agency or public official or employee of a public
43 agency shall be penalized for violating a provision of this section,
44 unless such violation is wilful and knowing. Any complaint of such a
45 violation shall be made to the Freedom of Information Commission.

46 Upon receipt of such a complaint, the commission shall serve upon the
47 public agency, official or employee, as the case may be, by certified or
48 registered mail, a copy of the complaint. The commission shall provide
49 the public agency, official or employee with an opportunity to be
50 heard at a hearing conducted in accordance with the provisions of
51 chapter 54 of the general statutes, unless the commission, upon motion
52 of the public agency, official or employee or upon motion of the
53 commission, dismisses the complaint without a hearing if it finds, after
54 examining the complaint and construing all allegations most favorably
55 to the complainant, that the public agency, official or employee has not
56 wilfully and knowingly violated a provision of this section. If the
57 commission finds that the public agency, official or employee wilfully
58 and knowingly violated a provision of this section, the commission
59 may impose against such public agency, official or employee a civil
60 penalty of not less than twenty dollars nor more than one thousand
61 dollars. Nothing in this section shall be construed to allow a private
62 right of action against a public agency, public official or employee of a
63 public agency.

64 Sec. 2. Subsection (e) of section 1-205 of the general statutes is
65 repealed and the following is substituted in lieu thereof (*Effective*
66 *October 1, 2018*):

67 (e) The Freedom of Information Commission shall conduct training
68 sessions, at least annually, for members of public agencies for the
69 purpose of educating such members as to the requirements of sections
70 1-7 to 1-14, inclusive, 1-16 to 1-18, inclusive, 1-200 to 1-202, inclusive, 1-
71 205, 1-206, 1-210 to 1-217, inclusive, 1-225 to 1-232, inclusive, 1-240, 1-
72 241, and 19a-342 and section 1 of this act.

73 Sec. 3. Section 1-200 of the general statutes is repealed and the
74 following is substituted in lieu thereof (*Effective October 1, 2018*):

75 As used in this chapter and section 1 of this act, the following words
76 and phrases shall have the following meanings, except where such
77 terms are used in a context which clearly indicates the contrary:

78 (1) "Public agency" or "agency" means:

79 (A) Any executive, administrative or legislative office of the state or
80 any political subdivision of the state and any state or town agency, any
81 department, institution, bureau, board, commission, authority or
82 official of the state or of any city, town, borough, municipal
83 corporation, school district, regional district or other district or other
84 political subdivision of the state, including any committee of, or
85 created by, any such office, subdivision, agency, department,
86 institution, bureau, board, commission, authority or official, and also
87 includes any judicial office, official, or body or committee thereof but
88 only with respect to its or their administrative functions, and for
89 purposes of this subparagraph, "judicial office" includes, but is not
90 limited to, the Division of Public Defender Services;

91 (B) Any person to the extent such person is deemed to be the
92 functional equivalent of a public agency pursuant to law; or

93 (C) Any "implementing agency", as defined in section 32-222.

94 (2) "Meeting" means any hearing or other proceeding of a public
95 agency, any convening or assembly of a quorum of a multimember
96 public agency, and any communication by or to a quorum of a
97 multimember public agency, whether in person or by means of
98 electronic equipment, to discuss or act upon a matter over which the
99 public agency has supervision, control, jurisdiction or advisory power.
100 "Meeting" does not include: Any meeting of a personnel search
101 committee for executive level employment candidates; any chance
102 meeting, or a social meeting neither planned nor intended for the
103 purpose of discussing matters relating to official business; strategy or
104 negotiations with respect to collective bargaining; a caucus of members
105 of a single political party notwithstanding that such members also
106 constitute a quorum of a public agency; an administrative or staff
107 meeting of a single-member public agency; and communication
108 limited to notice of meetings of any public agency or the agendas
109 thereof. A quorum of the members of a public agency who are present
110 at any event which has been noticed and conducted as a meeting of

111 another public agency under the provisions of the Freedom of
112 Information Act shall not be deemed to be holding a meeting of the
113 public agency of which they are members as a result of their presence
114 at such event.

115 (3) "Caucus" means (A) a convening or assembly of the enrolled
116 members of a single political party who are members of a public
117 agency within the state or a political subdivision, or (B) the members of
118 a multimember public agency, which members constitute a majority of
119 the membership of the agency, or the other members of the agency
120 who constitute a minority of the membership of the agency, who
121 register their intention to be considered a majority caucus or minority
122 caucus, as the case may be, for the purposes of the Freedom of
123 Information Act, provided (i) the registration is made with the office of
124 the Secretary of the State for any such public agency of the state, in the
125 office of the clerk of a political subdivision of the state for any public
126 agency of a political subdivision of the state, or in the office of the clerk
127 of each municipal member of any multitown district or agency, (ii) no
128 member is registered in more than one caucus at any one time, (iii) no
129 such member's registration is rescinded during the member's
130 remaining term of office, and (iv) a member may remain a registered
131 member of the majority caucus or minority caucus regardless of
132 whether the member changes his or her party affiliation under chapter
133 143.

134 (4) "Person" means natural person, partnership, corporation, limited
135 liability company, association or society.

136 (5) "Public records or files" means any recorded data or information
137 relating to the conduct of the public's business prepared, owned, used,
138 received or retained by a public agency, or to which a public agency is
139 entitled to receive a copy by law or contract under section 1-218,
140 whether such data or information be handwritten, typed, tape-
141 recorded, printed, photostated, photographed or recorded by any
142 other method.

143 (6) "Executive sessions" means a meeting of a public agency at

144 which the public is excluded for one or more of the following
145 purposes: (A) Discussion concerning the appointment, employment,
146 performance, evaluation, health or dismissal of a public officer or
147 employee, provided that such individual may require that discussion
148 be held at an open meeting; (B) strategy and negotiations with respect
149 to pending claims or pending litigation to which the public agency or a
150 member thereof, because of the member's conduct as a member of such
151 agency, is a party until such litigation or claim has been finally
152 adjudicated or otherwise settled; (C) matters concerning security
153 strategy or the deployment of security personnel, or devices affecting
154 public security; (D) discussion of the selection of a site or the lease, sale
155 or purchase of real estate by the state or a political subdivision of the
156 state when publicity regarding such site, lease, sale, purchase or
157 construction would adversely impact the price of such site, lease, sale,
158 purchase or construction until such time as all of the property has been
159 acquired or all proceedings or transactions concerning same have been
160 terminated or abandoned; and (E) discussion of any matter which
161 would result in the disclosure of public records or the information
162 contained therein described in subsection (b) of section 1-210.

163 (7) "Personnel search committee" means a body appointed by a
164 public agency, whose sole purpose is to recommend to the appointing
165 agency a candidate or candidates for an executive-level employment
166 position. Members of a "personnel search committee" shall not be
167 considered in determining whether there is a quorum of the
168 appointing or any other public agency.

169 (8) "Pending claim" means a written notice to an agency which sets
170 forth a demand for legal relief or which asserts a legal right stating the
171 intention to institute an action in an appropriate forum if such relief or
172 right is not granted.

173 (9) "Pending litigation" means (A) a written notice to an agency
174 which sets forth a demand for legal relief or which asserts a legal right
175 stating the intention to institute an action before a court if such relief or
176 right is not granted by the agency; (B) the service of a complaint

177 against an agency returnable to a court which seeks to enforce or
178 implement legal relief or a legal right; or (C) the agency's consideration
179 of action to enforce or implement legal relief or a legal right.

180 (10) "Freedom of Information Act" means this chapter.

181 (11) "Governmental function" means the administration or
182 management of a program of a public agency, which program has
183 been authorized by law to be administered or managed by a person,
184 where (A) the person receives funding from the public agency for
185 administering or managing the program, (B) the public agency is
186 involved in or regulates to a significant extent such person's
187 administration or management of the program, whether or not such
188 involvement or regulation is direct, pervasive, continuous or day-to-
189 day, and (C) the person participates in the formulation of
190 governmental policies or decisions in connection with the
191 administration or management of the program and such policies or
192 decisions bind the public agency. "Governmental function" shall not
193 include the mere provision of goods or services to a public agency
194 without the delegated responsibility to administer or manage a
195 program of a public agency.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2018</i>	New section
Sec. 2	<i>October 1, 2018</i>	1-205(e)
Sec. 3	<i>October 1, 2018</i>	1-200

PS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which requires the nondisclosure of birth dates of certain public agency employees, has no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 279*****AN ACT EXEMPTING THE DATE OF BIRTH OF A POLICE OFFICER AND AN EMPLOYEE OF THE DEPARTMENT OF CORRECTION FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT.*****SUMMARY**

This bill generally exempts certain public safety employee's birthdate on personnel, medical, or similar files from disclosure by a public agency (e.g., state or municipal entities) under the Freedom of Information Act (FOIA). The employee must submit a written request for nondisclosure. The bill applies to the following employees' information: (1) sworn municipal or state police officers, (2) sworn energy and environmental protection officers, or (3) Department of Corrections employees.

The bill sets out procedures for agencies to follow for FOIA requests that involve such birthdate disclosures. The bill's exemptions do not apply to certain DMV records (e.g., those disclosable to other government agencies) and election records.

The bill specifies that state employees must not be penalized for violations unless they were willful and knowing. It also provides procedures for disclosure violation complaints and hearings. For willful and knowing violations, the Freedom of Information Commission (FOIC) may impose a civil penalty of at least \$20 but no more than \$1,000. But the bill does not create a private right of action.

The bill incorporates the new exemption and related requirements into the context of training sessions FOIC must conduct, at least annually, to educate public employees about FOIA and related laws.

EFFECTIVE DATE: October 1, 2018

AGENCY PROCEDURES FOR REQUESTS

The bill sets out procedures for a public agency that receives a FOIA request of a record from its personnel, medical, or similar files that has the birthdate of a public safety employee who has requested nondisclosure.

Under the bill, when the agency receives a request for a disclosable record where the request:

1. specifically names a public safety employee who requested his or her birthdate to be confidential, the agency must redact the birthdate from the copy of the requested record;
2. is for an existing list that is from a readily accessible electronic database, the agency must make a reasonable effort to redact the birthdates before releasing the list; or
3. is for a list the agency voluntarily creates in response to a disclosure request, it must make a reasonable effort to redact the birthdates before disclosure.

Outside of these situations, the bill allows public agencies to disclose a public safety employee's birthdate.

COMPLAINTS AND PENALTIES

The bill specifies that no public agency, official, or employee will be penalized for violating the bill's provisions unless the violation was willful and knowing.

Under the bill, any complaint for violations must be made to FOIC. When the commission receives a complaint, it must serve a copy of the complaint upon the agency, official, or employee (i.e., accused party) by certified or registered mail. Unless the complaint is dismissed, FOIC must allow the accused party to have a hearing in accordance with the Uniform Administrative Procedure Act.

Upon an accused party's motion or its own motion, the commission may dismiss the complaint without a hearing if it finds that there was

no willful and knowing violation after examining the complaint and construing the allegation most favorably to the complainant.

Under the bill, if FOIC finds that the accused party committed a willful and knowing violation, it may impose a civil penalty of at least \$20 but no more than \$1,000.

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable Substitute

Yea 17 Nay 8 (03/16/2018)